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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140722613-4908-02]

RIN 0648-XG734

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Coastal Migratory Pelagic Resources of the Gulf of Mexico and
Atlantic Region; Commercial Closure for Spanish Mackerel**

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for
commercial Spanish mackerel in the Atlantic southern zone of
the exclusive economic zone (EEZ) through this temporary rule.
NMFS has determined that the commercial quota for Spanish
mackerel in the Atlantic southern zone will be reached by
February 5, 2019. Therefore, NMFS closes the Atlantic southern
zone of the EEZ to commercial harvest of Spanish mackerel on
February 5, 2019. This closure is necessary to protect the
Spanish mackerel resource in the Atlantic.

DATES: The closure is effective at 6:00 a.m., local time, on

February 5, 2019, until 12:01 a.m., local time, on March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: *mary.vara@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights described for Spanish mackerel in the Atlantic EEZ apply as either round or gutted weight. The fishing year for the Atlantic migratory group of Spanish mackerel (Atlantic Spanish mackerel) is March through the end of February each year.

Framework Amendment 1 to the FMP (79 FR 69058; November 20, 2014) implemented a commercial annual catch limit (equal to the commercial quota) of 3.33 million lb (1.51 million kg) for Atlantic Spanish mackerel. Atlantic Spanish mackerel are divided into a northern and southern zone for management

purposes. The southern zone consists of Federal waters off South Carolina, Georgia, and the east coast of Florida. The northern boundary for the southern zone for Atlantic Spanish mackerel extends from the state border of North Carolina and South Carolina along a line beginning at 33°51'07.9" N. lat. and 78°32'32.6" W. long. and extending in a direction of 135°34'55" from true north to the intersection point with the outward boundary of the EEZ. The southern boundary for the southern zone is 25°20'24" N. lat., which is the boundary between Miami-Dade and Monroe Counties, Florida.

The southern zone commercial quota for Atlantic Spanish mackerel is 2,667,330 lb (1,209,881 kg). Seasonally variable commercial trip limits are based on an adjusted commercial quota of 2,417,330 lb (1,096,482 kg), with the adjusted commercial quota calculated to allow continued harvest in the southern zone at a set rate for the remainder of the current fishing year, in accordance with 50 CFR 622.385(b)(2). Regulations at 50 CFR 622.385(b)(1)(ii) require NMFS to reduce the commercial trip limit for Atlantic Spanish mackerel in the southern zone when specified percentages of the adjusted commercial quota are reached or are projected to be reached. Accordingly, on December 27, 2018, NMFS published a temporary rule in the **Federal**

Register to reduce the commercial trip limit from 3,500 lb (1,588 kg) to 1,500 lb (680 kg) for Atlantic Spanish mackerel in the southern zone (83 FR 66635). On January 28, 2019, NMFS published a subsequent temporary rule in the **Federal Register** that further reduced the commercial trip limit for Atlantic Spanish mackerel in the southern zone to 500 lb (227 kg) (84 FR 407).

Regulations at 50 CFR 622.388(d)(1)(i) require NMFS to close the commercial sector for Atlantic Spanish mackerel in the southern zone when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the commercial quota of 2,667,330 lb (1,209,881 kg) for Atlantic Spanish mackerel in the southern zone will be reached by February 5, 2019. Accordingly, the commercial sector for Atlantic Spanish mackerel in the southern zone is closed effective at 6:00 a.m., local time, on February 5, 2019, through February 28, 2019, the end of the current fishing year. Commercial harvest of Atlantic Spanish mackerel for the 2019-2020 fishing year begins on March 1, 2019.

During the commercial closure, a person on board a vessel that has been issued a valid Federal permit to harvest Atlantic

Spanish mackerel may continue to retain this species in the southern zone under the recreational bag and possession limits specified in 50 CFR 622.382(a)(1)(iii) and (a)(2), as long as the recreational sector for Atlantic Spanish mackerel is open (50 CFR 622.384(e)(1)).

Also during the closure, Atlantic Spanish mackerel from the closed zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to Atlantic Spanish mackerel from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

Classification

The RA for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Atlantic Spanish mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8, 622.384(e), and 622.388(d)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act, because the temporary rule is

issued without opportunity for prior notice and opportunity for comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b) (B) as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AM has already been subject to notice and public comment, and all that remains is to notify the public of the closure. Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the Atlantic Spanish mackerel stock, because the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d) (3) .

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 31, 2019.

Karen H. Abrams,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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